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JAN 27 2009

COURT OF APPEALS
DIVISION TWO

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2008-0026
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JAMES RENARD REED III,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20055104

Honorable Charles S. Sabalos, Judge
Honorable Gus Aragon, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Law Office of David Alan Darby, Esq.
By David Alan Darby

Tucson
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 After a jury trial, appellant James Reed was convicted in absentia of one count of possession of burglary tools, one count of second-degree burglary, one count of theft by control, and one count of trafficking in stolen property. The trial court suspended imposition of sentence and imposed three years' probation and sixty days' incarceration. On appeal, Reed contends the trial court erred in denying his motion for a judgment of acquittal on the theft count.¹ Because the trial court did not abuse its discretion, we affirm Reed's convictions and probationary term.

Discussion

¶2 Reed argues the trial court erred in denying his motion for judgment of acquittal on the theft charge, submitted pursuant to Rule 20, Ariz. R. Crim. P. On appeal, we view the evidence in the light most favorable to sustaining the jury's verdicts. *State v. Garza*, 216 Ariz. 56, n.1, 163 P.3d 1006, 1011 n.1 (2007), *cert. denied*, ___ U.S. ___, 128 S. Ct. 890 (2008). "We review a trial court's denial of a Rule 20 motion for an abuse of discretion and will reverse only if no substantial evidence supports the conviction." *State v. Henry*, 205 Ariz. 229, ¶ 11, 68 P.3d 455, 458 (App. 2003). Substantial evidence "is evidence that a reasonable jury can accept as sufficient to infer guilt beyond a reasonable doubt." *Id.* Such

¹In a footnote in its answering brief, the state concedes that A.R.S. § 13-4033(C) does not preclude Reed from appealing his conviction "more than a year after it was obtained." Subsection C of this statute became effective on September 25, 2008. *See* 2008 Ariz. Sess. Laws, ch. 25, § 1; *see also* Ariz. Const. art. IV, pt. 1, § 1(3) (laws effective ninety days after close of legislative session). Reed was sentenced on January 14, 2008. We accept the state's concession.

evidence can be direct or circumstantial, “but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury,” and the “trial judge has no discretion to enter a judgment of acquittal in such a situation.” *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶3 Reed contends the state’s own closing argument illustrates the weakness of its case against him for the burglary and trafficking counts involving one of the victims, M.C., and “demonstrate[s] the highly speculative nature” of the evidence supporting the theft conviction. But he fails to explain what specific deficiencies in the state’s case its closing allegedly exposes. He next observes that the jury acquitted him of the M.C. burglary.² His acquittal on the burglary charge, however, is irrelevant to the theft-by-control offense, which was committed after the burglary. *Compare* A.R.S. §13-1507, *with* A.R.S. § 13-1802(A)(5). Reed further claims the inferences permitted by A.R.S. § 13-2305³ are insufficient to sustain

²The burglary charge of which Reed was convicted involved a different victim, T.P.

³Section 13-2305 states:

In an action for trafficking in stolen property:

1. Proof of possession of property recently stolen, unless satisfactorily explained, may give rise to an inference that the person in possession of the property was aware of the risk that it had been stolen or in some way participated in its theft.

2. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

the finding of guilt, but he does not explain why. And, by arguing those inferences are insufficient, he impliedly admits his possession of recently stolen property.

¶4 Reed also claims that, although he was convicted of trafficking in the second degree, no evidence was presented linking him to the theft of M.C.’s property either as a principal or accomplice. But to be convicted of trafficking, Reed need not have stolen the items either as a principal or accomplice. A.R.S. § 13-2307(A). Reed next argues that insufficient evidence was presented concerning the value of the property of another victim, T.P., to sustain a conviction. But he was not convicted of the theft of T.P.’s property. He was only convicted of the theft of M.C.’s property.

¶5 Although we have rejected each of Reed’s specific contentions, we have also reviewed the record and conclude that substantial evidence supports Reed’s theft conviction. Reed was convicted of theft, which—when he committed the offense—required the state to prove that he knowingly controlled the “property of another knowing or having reason to know that the property was stolen” and that the property was valued at \$3,000 or more but less than \$25,000. *See* § 13-1802(A)(5), (E); 2006 Ariz. Sess. Laws, ch. 195, § 2. The state

3. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

presented evidence from which a jury could infer that Reed had pawned approximately one hundred DVDs, a DVD player, computer, and computer monitor belonging to M.C. And M.C. testified that his DVD collection of approximately 320 DVDs was valued between \$10,000 and \$12,000 and that his computer was valued at approximately \$2,000.

¶6 Because substantial evidence supported Reed's theft conviction, the trial court did not err in denying Reed's motion for a judgment of acquittal on that count. *See Landrigan*, 176 Ariz. at 4, 859 P.2d at 114. In light of the foregoing, we affirm Reed's convictions and probationary term.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

PHILIP G. ESPINOSA, Judge